

Memorandum

820.0850

To : Mr. Dan Cady (MIC:27)
Senior Tax Auditor
Local Revenue Allocation Section

Date: January 7, 1997

From : John L. Waid
Senior Tax Counsel

Subject: [No Permit Number]
Redistributions of Local and
District Tax

I am responding to your memorandum dated November 6, 1996 to Assistant Chief Counsel Gary J. Jugum. We also discussed these questions in a conference with him, Clay Cowan, and Larry Micheli, on December 20, 1996. You raised two questions regarding redistribution of both local and district taxes.

1. Local Taxes.

You had several questions concerning my memorandum dated April 5, 1996, to Allocation Group Supervisor Robert Wils determining that redistributions of a previous redistribution are not available even if the Board receives advice that the previous redistribution was improper. As you also note, the same rule is set forth in Annotation 702.1010 (5/25/95).

At the time I wrote my memorandum, I was under the impression that I was writing on a clean slate. The language of section 7209 permits the Board to "redistribute tax . . . originally distributed," but it does not refer to a redistribution of a redistribution. As you pointed out in both your memorandum and at our meeting, the language of the statute is ambiguous and can be read to make the first "re-distribution" an "amount originally distributed," and that it had previously been determined that such language would permit a second redistribution as long as the new information came in within two quarters after the first redistribution. This issue is not free from doubt, but the

construction previously made by the staff is reasonable in view of the statutory language.

Therefore, we rescind our opinion of April 5 to the extent that it conflicts with this opinion. I am, by copy of this memorandum, requesting that it be annotated to clarify Annotation 702.1010.

2. District Taxes.

We also talked about the issue of redistributions of district tax. As we had previously discussed, there is no statute comparable to section 7209 in the District Tax Law. Nevertheless, the Board had previously determined that it had the general power to redistribute tax under the District Tax Law as part of its duty to ensure that the proper tax went to the proper district. As you pointed out, section 7209 was originally not part of the Local Tax Law, but the Board reallocated local tax anyway under the same theory, and that section 7209 was designed as a limitation on how far back we could go. You ask if there are any statutes limiting our authority to make redistributions.

In our conference we determined that no statute barred the Board from making such redistributions under its general authority to administer the tax and its contractual obligation to transmit to a district the money to which it is entitled. (Contract, Art. II, § B.) The previous staff interpretation is consistent with these principles. That being the case, then, there is no specific limit on how far back the Board can go in making such redistributions. Thus, the Board seems to be limited only by the three-year statute of limitations contained in section 6487.

JLW:sr

cc: Mr. Larry Micheli (MIC:27)
Mr. Gary J. Jugum

bc: Mr. Robert Wils (MIC:39)
(This does not appear to alter the result in Peterson Tractor.)